

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
WESTERN DIVISION - AT TACOMA

ANITA LARSON,)
Plaintiff,)
v.)
TRANS UNION LLC, a foreign limited liability)
company, EQUIFAX INFORMATION)
SERVICES LLC, a foreign limited liability)
company; AMERIQUEST MORTGAGE)
COMPANY, a foreign limited liability)
company; and LITTON LOAN SERVICING)
LP, a foreign limited liability company,)
Defendant.)

No. 3:08-CV-05534-BHS
AMERIQUEST MORTGAGE
COMPANY'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT FOR
DAMAGES

ANSWER

Ameriquest Mortgage Company (“Ameriquest”), by and through its Counsel, hereby files its answer and defenses to Plaintiffs’ Complaint. Ameriquest states that all allegations contained in the Complaint are denied unless specifically admitted and any factual averment admitted is admitted only as to the specific facts and not as to any conclusions, characterizations, implications, or speculations that may be contained in the averment or in the Complaint as a whole. Ameriquest further answers as follows:

AMERIQUEST MORTGAGE COMPANY'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT
FOR DAMAGES - 1
Case No. 3:08-CV-05534-BHS

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JURISDICTION

1. To the extent Paragraph 1 purports to assert conclusions of law, no answer is necessary and none is given. Ameriquest is without knowledge or information sufficient to form a belief as to whether jurisdiction is proper in this Court, and therefore denies the same.

2. To the extent Paragraph 2 purports to assert conclusions of law, no answer is necessary and none is given. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 2 and therefore denies them.

3. To the extent Paragraph 3 purports to assert conclusions of law, no answer is necessary and none is given. Ameriquest is without knowledge or information sufficient to form a belief as to whether venue is proper in this Court, and therefore denies the same.

PARTIES

4. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and therefore denies them.

5. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and therefore denies them.

6. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 and therefore denies them.

7. Ameriquest admits the allegations contained in paragraph 7.

8. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and therefore denies them.

FACTUAL ALLEGATIONS

9. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 as they apply to Ameriquest and therefore denies them. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 9 and therefore denies them. Ameriquest avers that it ceased

1 servicing the loan in November 2003 and therefore did not report to the credit reporting agencies
2 in 2006 and 2007. Ameriquest was not a loan servicer at any time after March 30, 2005 for any
3 loan.

4 10. Ameriquest is without knowledge or information sufficient to form a belief as to
5 the truth of the allegations of Paragraph 10 as they apply to Ameriquest and therefore denies
6 them. Ameriquest was not a mortgage loan servicer after March 30, 2005. Requests by Plaintiff
7 after March 31, 2005 were not addressed by Ameriquest, but by another corporation known as
8 AMC Mortgage Services, Inc. Ameriquest is without knowledge or information sufficient to
9 form a belief as to the truth of the remaining allegations of Paragraph 10 and therefore denies
10 them.

11 11. Ameriquest is without knowledge or information sufficient to form a belief as to
12 the truth of the allegations of Paragraph 11 as they apply to Ameriquest and therefore denies
13 them. Ameriquest is without knowledge or information sufficient to form a belief as to the truth
14 of the remaining allegations of Paragraph 11 and therefore denies them.

TRIAL BY JURY

12. Ameriquest admits that Plaintiff demands a trial by jury.

CLAIMS FOR RELIEF

**FIRST CLAIM FOR RELIEF
(TRANS UNION AND EQUIFAX)**

23 14. Ameriquest is without knowledge or information sufficient to form a belief as to
24 the truth of the allegations of Paragraph 14 and therefore denies them.

25 15. Ameriquest is without knowledge or information sufficient to form a belief as to
the truth of the allegations of Paragraph 15 and therefore denies them.
26

16. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 and therefore denies them.

17. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 and therefore denies them.

**SECOND CLAIM FOR RELIEF
(TRANS UNION AND EQUIFAX)**

18. Ameriquest hereby incorporates its answer to each and every allegation contained in Paragraphs 1 through 12 of the Complaint, above.

19. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 and therefore denies them.

20. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 and therefore denies them.

21. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 and therefore denies them.

**THIRD CLAIM FOR RELIEF
(AMERIQUEST AND LITTON)**

22. Ameriquest hereby incorporates its answer to each and every allegation contained in Paragraphs 1 through 12 of the Complaint, above.

23. To the extent Paragraph 23 purports to assert conclusions of law, no answer is necessary and none is given. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 as they apply to Ameriquest and therefore denies them. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 23 and therefore denies them.

24. Ameriquest is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 as they apply to Ameriquest, which ceased servicing Plaintiff's loan in November 2003 and ceased servicing all loans on March 30, 2005, and

1 therefore denies them. Ameriquest is without knowledge or information sufficient to form a
2 belief as to the truth of the remaining allegations of Paragraph 24 and therefore denies them.

3 25. To the extent Paragraph 25 purports to assert conclusions of law, no answer is
4 necessary and none is given. Ameriquest is without knowledge or information sufficient to form
5 a belief as to the truth of the allegations of Paragraph 25 as they apply to Ameriquest and
6 therefore denies them. Ameriquest is without knowledge or information sufficient to form a
7 belief as to the truth of the remaining allegations of Paragraph 25 and therefore denies them.

8 26. To the extent Paragraph 26 purports to assert conclusions of law, no answer is
9 necessary and none is given. Ameriquest is without knowledge or information sufficient to form
10 a belief as to the truth of the allegations of Paragraph 26 as they apply to Ameriquest and
11 therefore denies them. Ameriquest is without knowledge or information sufficient to form a
12 belief as to the truth of the remaining allegations of Paragraph 26 and therefore denies them.

FOURTH CLAIM FOR RELIEF (AMERIQUEST AND LITTON)

15 27. Ameriquest hereby incorporates its answer to each and every allegation contained
in Paragraphs 1 through 12 of the Complaint, above.

17 28. To the extent Paragraph 28 purports to assert conclusions of law, no answer is
18 necessary and none is given. Ameriquest is without knowledge or information sufficient to form
19 a belief as to the truth of the allegations of Paragraph 28 as they apply to Ameriquest and
20 therefore denies them. Ameriquest ceased servicing Plaintiff's loan in November 2003 and
21 ceased servicing all loans on March 30, 2005. Ameriquest is without knowledge or information
22 sufficient to form a belief as to the truth of the remaining allegations of Paragraph 28 and
therefore denies them.

24 29. Ameriquest is without knowledge or information sufficient to form a belief as to
25 the truth of the allegations of Paragraph 29 as they apply to Ameriquest and therefore denies
them. Ameriquest ceased servicing Plaintiff's loan in November 2003 and ceased servicing all

1 loans on March 30, 2005. Ameriquest is without knowledge or information sufficient to form a
 2 belief as to the truth of the remaining allegations of Paragraph 29 and therefore denies them.

3 30. To the extent Paragraph 30 purports to assert conclusions of law, no answer is
 4 necessary and none is given. Ameriquest is without knowledge or information sufficient to form
 5 a belief as to the truth of the allegations of Paragraph 30 as they apply to Ameriquest and
 6 therefore denies them. Ameriquest is without knowledge or information sufficient to form a
 7 belief as to the truth of the remaining allegations of Paragraph 30 and therefore denies them.

PRAYER FOR RELIEF

9 Ameriquest denies that Plaintiff is entitled to any requested relief, and respectfully asks
 10 this Court to enter judgment against Plaintiff and to dismiss Plaintiff's Complaint with prejudice;
 11 to award Ameriquest its costs and fees incurred, including reasonable attorneys fees; and for
 12 such other award as this Court deems appropriate.

AFFIRMATIVE DEFENSES

14 Further answering, Ameriquest asserts the following affirmative defenses:

First Affirmative Defense

16 For its first affirmative defense, Ameriquest alleges that Plaintiffs' Complaint, in whole,
 17 or in part, fails to state a claim upon which relief can be granted.

Second Affirmative Defense

19 For its second affirmative defense, Ameriquest asserts the defense of good faith, due care,
 20 and failure to directly or indirectly induce the alleged act, or acts, constituting the alleged
 21 violation or cause of action.

Third Affirmative Defense

23 For its third affirmative defense, Ameriquest asserts that, in the event liability is
 24 established against one or more of the defendants, which liability Ameriquest expressly denies,
 25 Ameriquest did not know, and in the exercise of reasonable care, could not have known, of the
 26 existence of the facts by reason of which liability is alleged to exist.

Fourth Affirmative Defense

For its fourth affirmative defense, Ameriquest asserts that the damages, if any, suffered by Plaintiff should be apportioned to the relative fault of the Plaintiff and/or other parties, including other defendants.

Fifth Affirmative Defense

For its fifth affirmative defense, Ameriquest asserts that Plaintiffs' claims are barred by the doctrines of estoppel, unclean hands, and/or waiver.

Sixth Affirmative Defense

For its sixth affirmative defense, Ameriquest asserts that Plaintiff has failed to mitigate her damages, if any.

Seventh Affirmative Defense

For its seventh affirmative defense, Ameriquest alleges offset against any damages awarded to Plaintiff.

Eighth Affirmative Defense

For its eighth affirmative defense, Ameriquest alleges that Plaintiff's damages, if any, were proximately caused by Plaintiff's own actions or inactions and/or the actions of inactions of others, over whom Ameriquest had no control.

Ninth Affirmative Defense

For its ninth affirmative defense, Ameriquest alleges that it is not liable for any of the Plaintiff's alleged damages under a theory of contributory or comparative negligence.

Tenth Affirmative Defense

For its tenth affirmative defense, Ameriquest alleges that Plaintiff has failed to name and join all parties potentially liable for any damages to be proven by Plaintiff.

Eleventh Affirmative Defense

For its eleventh affirmative defense, Ameriquest alleges that some or all of Plaintiff's claims are barred by the applicable statute of limitations.

Twelfth Affirmative Defense

For its twelfth affirmative defense, Ameriquest alleges that the acts and omissions complained of by Plaintiff exceeded the actual and/or apparent authority, if any, given by Ameriquest and Plaintiff is barred from asserting claims based on said acts and/or omissions against Ameriquest. Further, Plaintiff knew or in the exercise of reasonable diligence should have known that the acts and/or omissions relied on were not authorized by Ameriquest.

Thirteenth Affirmative Defense

For its thirteenth affirmative defense, Ameriquest alleges that Plaintiff's state law and common law claims are pre-empted by the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*

Fourteenth Affirmative Defense

For its fourteenth affirmative defense, Ameriquest alleges that any reports it made concerning Plaintiff were true or substantially true.

Fifteenth Affirmative Defense

For its fifteenth affirmative defense, Ameriquest alleges that it has, at all times, followed reasonable procedures to assure maximum possible accuracy of any reports it made concerning Plaintiff.

Sixteenth Affirmative Defense

For its sixteenth affirmative defense, Ameriquest alleges that Plaintiff's claims are barred, in whole or part, by 15 U.S.C. §§ 1681s-2(b), 1681n(a), or 1691o(a).

Seventeenth Affirmative Defense

For its seventeenth affirmative defense, Ameriquest alleges that Plaintiff has not alleged any injury in fact and/or has not sustained any damages.

Eighteenth Affirmative Defense

For its eighteenth affirmative defense, Ameriquest alleges that any claim for exemplary or punitive damages asserted by Plaintiff violates Ameriquest's rights under the Dupe Process and Excessive Fines clauses of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the

1 United States Constitution and the analogous provisions of applicable State Constitutions, and
 2 under the First Amendment of the United States Constitution and the analogous provisions of
 3 applicable State Constitutions.

4 **RESERVATION OF RIGHTS**

5 Ameriquest specifically reserves the right to amend its answer to add defenses and
 6 affirmative defenses, to add counterclaims and third-party defendants, and to argue legal theories
 7 in addition to, or in lieu of, those specifically identified herein, as the facts in this matter may
 8 warrant, including without limitation, additional or further facts hereafter disclosed through
 9 discovery.

10 DATED this 2nd day of April, 2009.

11 FOSTER PEPPER PLLC

12
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 FOR DAMAGES - 9

Case No. 3:08-CV-05534-BHS

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DECLARATION OF SERVICE

I, Susan Grimes-Zak, state that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty one years, I am not a party to this action, and I am competent to be a witness herein. I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System who will send notification of such filing to the following parties who have appeared in this action as of today's date:

- **Justin M. Baxter** Justin@baxterlaw.com
 - **William R. Brown** wbrown@schuckitlaw.com
 - **George Akers** Akers@mpba.com
 - **Kevin Breck** khb@winstoncashatt.com
 - **Lance Olsen** lolsen@rcflegal.com

There are no other parties who have appeared in this action as of today's date that need to be served manually.

I DECLARE under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 2nd day of April, 2009, at Seattle, Washington.



Susan Grimes-Zak

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